

HOUSE BILL 37

E2

CONSTITUTIONAL AMENDMENT
(PRE-FILED)

2lr0841

By: **Delegate Smigiel**

Requested: November 2, 2011

Introduced and read first time: January 11, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Declaration of Rights – Victims’ Bill of Rights**

3 FOR the purpose of proposing an amendment to the Maryland Declaration of Rights to
4 expand the rights of a victim of crime; establishing the right of a victim of crime
5 to be treated with fairness; establishing that the rights of a victim of crime
6 apply during the juvenile justice process; establishing the right of a victim of
7 crime to be free of intimidation, harassment, or abuse during the criminal or
8 juvenile justice process; establishing the right of a victim of crime to be
9 reasonably protected from the defendant or child respondent or persons acting
10 on behalf of the defendant or child respondent; establishing the right of a victim
11 of crime to have the safety of the victim or victim’s family be considered in fixing
12 the amount of bail and release conditions of the defendant or child respondent;
13 establishing the right of a victim of crime to set reasonable conditions on the
14 conduct of a certain interview, deposition, or discovery request of the victim;
15 establishing the right of a victim of crime, upon request, to confer with the
16 prosecuting attorney on certain pre-trial issues; establishing the right of a
17 victim of crime, upon request, to have reasonable notice of and be present for all
18 public proceedings at which the defendant or child respondent has the right to
19 be present and all parole and other postconviction release proceedings;
20 establishing the right of a victim of crime, upon request, to be heard at a certain
21 proceeding; establishing the right of a victim of crime to provide certain
22 information and sentencing recommendations to the State; establishing the
23 right of a victim of crime, upon request, to receive the presentence report at a
24 certain time; establishing the right of a victim of crime to be informed, upon
25 request, of the conviction, place of incarceration, scheduled and actual release
26 date, and, if applicable, time and date of escape of the defendant or child
27 respondent from State custody; establishing the right of a victim of crime to
28 restitution including when the case is placed on a certain docket or the
29 defendant receives a certain sentence; establishing the right of a victim to be
30 the first paid restitution from money or property collected from a certain person;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 establishing the right of a victim of crime to the prompt return of personal
 2 property when the property is no longer needed as evidence of the crime;
 3 establishing the right of a victim of crime to be informed of all parole
 4 procedures, participate in the parole process, provide certain information to the
 5 State, and, upon request, be notified of the parole or other release of the
 6 defendant; establishing the right of a victim of crime to have the safety of the
 7 victim, the victim's family, and the general public considered before the State
 8 makes a certain postjudgment release decision; establishing the right of a victim
 9 of crime, a victim's lawful representative or attorney, or the prosecuting
 10 attorney, upon request, to enforce the victim's rights in a trial or appellate court
 11 with jurisdiction over the case; requiring the court with jurisdiction to act
 12 promptly regarding a certain request; making a certain stylistic change;
 13 submitting this amendment to the qualified voters of the State for their
 14 adoption or rejection; and generally relating to victims' rights.

15 BY proposing an amendment to the Maryland Constitution
 16 Declaration of Rights
 17 Article 47

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 19 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
 20 concurring), That it be proposed that the Maryland Constitution read as follows:

21 **Declaration of Rights**

22 Article 47.

23 **(A) IN THIS SECTION, THE TERMS "CHILD RESPONDENT", "CRIME",**
 24 **"CRIMINAL JUSTICE PROCEEDING", "PROSECUTING ATTORNEY", AND "VICTIM"**
 25 **ARE AS SPECIFIED BY LAW.**

26 **[(a)] (B)** A victim of crime shall be treated by agents of the State with
 27 dignity, **FAIRNESS**, respect, and sensitivity during all phases of the criminal **OR**
 28 **JUVENILE** justice process.

29 **[(b)] (C)** In a case originating by indictment or information filed in a circuit
 30 court, a victim of crime shall have the right to **[be]:**

31 **(1) BE** informed of the rights established in this Article and, upon
 32 request and if practicable, to be notified of, to attend, and to be heard at a criminal
 33 justice **OR JUVENILE** proceeding, as these rights are implemented **[and the terms**
 34 **"crime", "criminal justice proceeding", and "victim" are specified by law] IN LAW;**

35 **(2) BE FREE FROM INTIMIDATION, HARASSMENT, OR ABUSE**
 36 **DURING ALL PHASES OF THE CRIMINAL OR JUVENILE JUSTICE PROCESS;**

1 **(3) BE REASONABLY PROTECTED FROM THE DEFENDANT OR**
2 **CHILD RESPONDENT AND PERSONS ACTING ON BEHALF OF THE DEFENDANT OR**
3 **CHILD RESPONDENT;**

4 **(4) HAVE THE SAFETY OF THE VICTIM AND THE FAMILY OF THE**
5 **VICTIM CONSIDERED IN FIXING THE AMOUNT OF BAIL AND RELEASE**
6 **CONDITIONS FOR THE DEFENDANT OR CHILD RESPONDENT;**

7 **(5) SET REASONABLE CONDITIONS ON THE CONDUCT OF ANY**
8 **INTERVIEW, DEPOSITION, OR DISCOVERY REQUEST OF THE VICTIM;**

9 **(6) UPON REQUEST, CONFER WITH THE PROSECUTING ATTORNEY**
10 **REGARDING THE ARREST OF THE DEFENDANT OR CHILD RESPONDENT, THE**
11 **CHARGES FILED AGAINST THE DEFENDANT OR CHILD RESPONDENT, AND THE**
12 **DETERMINATION OF WHETHER TO EXTRADITE THE DEFENDANT OR CHILD**
13 **RESPONDENT;**

14 **(7) UPON REQUEST, BE NOTIFIED OF AND INFORMED ABOUT THE**
15 **PRE-TRIAL DISPOSITION OF THE CASE;**

16 **(8) UPON REQUEST, REASONABLE NOTICE OF AND TO BE**
17 **PRESENT AT:**

18 **(i) ALL PUBLIC PROCEEDINGS AT WHICH THE DEFENDANT**
19 **OR CHILD RESPONDENT AND THE PROSECUTING ATTORNEY ARE ENTITLED TO**
20 **BE PRESENT; AND**

21 **(ii) ALL PAROLE AND OTHER POSTCONVICTION RELEASE**
22 **PROCEEDINGS;**

23 **(9) UPON REQUEST, BE HEARD AT ANY PROCEEDING INVOLVING**
24 **A POST-ARREST RELEASE DECISION, PLEA, SENTENCING, POSTCONVICTION**
25 **RELEASE DECISION, OR ANY OTHER PROCEEDING IN WHICH A RIGHT OF THE**
26 **VICTIM IS AT ISSUE;**

27 **(10) PROVIDE INFORMATION TO AN AGENT OF THE STATE**
28 **CONDUCTING A PRESENTENCE INVESTIGATION CONCERNING THE IMPACT OF**
29 **THE CRIME ON THE VICTIM AND THE VICTIM'S FAMILY AND TO PROVIDE**
30 **SENTENCING RECOMMENDATIONS TO THE STATE BEFORE THE SENTENCING OF**
31 **THE DEFENDANT OR CHILD RESPONDENT;**

1 **(11) UPON REQUEST, RECEIVE THE PRESENTENCE REPORT AT THE**
2 **SAME TIME IT IS MADE AVAILABLE TO THE DEFENDANT OR CHILD RESPONDENT,**
3 **EXCEPT FOR THE PORTIONS MADE CONFIDENTIAL BY LAW;**

4 **(12) UPON REQUEST, BE INFORMED OF THE:**

5 **(I) CONVICTION OF THE DEFENDANT OR CHILD**
6 **RESPONDENT;**

7 **(II) SENTENCE IMPOSED ON THE DEFENDANT OR CHILD**
8 **RESPONDENT;**

9 **(III) PLACE OF INCARCERATION AND DATE AND TIME**
10 **INCARCERATION WILL BEGIN;**

11 **(IV) SCHEDULED RELEASE DATE OF THE DEFENDANT OR**
12 **CHILD RESPONDENT; AND**

13 **(V) ACTUAL RELEASE OF THE DEFENDANT OR CHILD**
14 **RESPONDENT FROM STATE CUSTODY OR, WITHIN A REASONABLE TIME, THE**
15 **TIME AND DATE OF THE ESCAPE OF THE DEFENDANT OR CHILD RESPONDENT**
16 **FROM STATE CUSTODY;**

17 **(13) RESTITUTION IN EVERY CASE IN WHICH THE VICTIM SUFFERS**
18 **A LOSS, INCLUDING WHEN THE CASE IS PLACED ON THE STET DOCKET OR THE**
19 **DEFENDANT RECEIVES PROBATION BEFORE JUDGMENT;**

20 **(14) BE THE FIRST INDIVIDUAL PAID RESTITUTION FROM ANY**
21 **MONEY OR PROPERTY COLLECTED FROM A DEFENDANT, A CHILD RESPONDENT,**
22 **OR ANOTHER PERSON ORDERED TO MAKE RESTITUTION;**

23 **(15) THE PROMPT RETURN OF PERSONAL PROPERTY WHEN THE**
24 **PROPERTY IS NO LONGER NEEDED AS EVIDENCE OF THE CRIME;**

25 **(16) BE INFORMED OF ALL PAROLE PROCEDURES, PARTICIPATE IN**
26 **THE PAROLE PROCESS, PROVIDE INFORMATION TO THE AGENT OF THE STATE**
27 **FOR CONSIDERATION BEFORE THE PAROLE OF THE DEFENDANT OR CHILD**
28 **RESPONDENT, AND BE NOTIFIED, UPON REQUEST, OF THE PAROLE OR OTHER**
29 **RELEASE OF THE DEFENDANT OR CHILD RESPONDENT; AND**

30 **(17) HAVE THE SAFETY OF THE VICTIM, THE VICTIM'S FAMILY, AND**
31 **THE GENERAL PUBLIC BE CONSIDERED BEFORE THE STATE MAKES ANY PAROLE**

1 OR OTHER POSTJUDGMENT RELEASE DECISION CONCERNING THE DEFENDANT
2 OR CHILD RESPONDENT.

3 (D) (1) A VICTIM OF CRIME, THE RETAINED ATTORNEY OF THE
4 VICTIM, A LAWFUL REPRESENTATIVE OF THE VICTIM, OR THE PROSECUTING
5 ATTORNEY, UPON REQUEST OF THE VICTIM, MAY ENFORCE THE RIGHTS
6 ENUMERATED IN THIS ARTICLE IN ANY TRIAL OR APPELLATE COURT WITH
7 JURISDICTION OVER THE VICTIM'S CASE.

8 (2) THE COURT WITH JURISDICTION SHALL ACT PROMPTLY
9 REGARDING A VICTIM'S REQUEST TO ENFORCE A RIGHT.

10 [c] (E) Nothing in this Article permits any civil cause of action for
11 monetary damages for violation of any of its provisions or authorizes a victim of crime
12 to take any action to stay a criminal justice proceeding.

13 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
14 determines that the amendment to the Maryland Constitution proposed by this Act
15 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the
16 Maryland Constitution concerning local approval of constitutional amendments do not
17 apply.

18 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
19 proposed as an amendment to the Maryland Constitution shall be submitted to the
20 qualified voters of the State at the next general election to be held in November, 2012
21 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
22 At that general election, the vote on this proposed amendment to the Constitution
23 shall be by ballot, and upon each ballot there shall be printed the words "For the
24 Constitutional Amendment" and "Against the Constitutional Amendment," as now
25 provided by law. Immediately after the election, all returns shall be made to the
26 Governor of the vote for and against the proposed amendment, as directed by Article
27 XIV of the Maryland Constitution, and further proceedings had in accordance with
28 Article XIV.